

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DISTRICT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 3:16-cr-46
) Knoxville, Tennessee
) June 14, 2016
SZUHSIUNG HO,) 11:00 a.m.
)
 Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE H. BRUCE GUYTON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 This cause came on for hearing on the 14th
2 day of June, 2016, in the United States District Court
3 for the Eastern District of Tennessee, Northern
4 Division, before the Honorable H. Bruce Guyton,
5 presiding.

6 The Court having been duly opened, the
7 following proceedings were had, to-wit:

8 THE COURTROOM DEPUTY: All rise. The United
9 States District Court for the Eastern District of
10 Tennessee is now open pursuant to adjournment with the
11 Honorable Bruce Guyton, United States Magistrate
12 Judge, presiding.

13 Please come to order and be seated.

14 Case No. 3:16-cr-46, United States of
15 America versus Szuhsiung Ho.

16 Here on behalf of the defendant is Peter
17 Zeidenberg and Wade Davies.

18 Is counsel for the defendant present and
19 ready to proceed?

20 MR. ZEIDENBERG: Good morning, Your Honor.

21 THE COURTROOM DEPUTY: Here on behalf of the
22 government is Charles Atchley.

23 Is counsel for the government present and
24 ready to proceed?

25 MR. ATCHLEY: Present and ready, Your Honor.

1 I also have Casey Airwood from the department.

2 THE COURT: All right. Good morning,
3 counsel.

4 Mr. Ho, can you hear me?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Counsel, first let's
7 take up this motion to declare the case complex,
8 extend time for filing, set a new trial date and so
9 forth. And I understand it's unopposed.

10 Is that correct, Mr. Atchley?

11 MR. ATCHLEY: That is correct, Your Honor.
12 Additionally, just so the Court has all the facts I
13 also --

14 THE COURT: Mr. Atchley, I've got to remind
15 everybody. We have a new sound and recording system
16 in this courtroom, just installed. It will not pick
17 you up unless you're either at the podium or seated
18 and speaking into the microphone.

19 (Mr. Atchley went to the podium.)

20 THE COURT: That's fine.

21 MR. ATCHLEY: In addition to discovery
22 that's already been provided I provided Mr. Zeidenberg
23 and Mr. Davies a DVD that contained approximately a
24 gigabyte worth of bank records this morning also that
25 we just came into possession of. So that would be on

1 top of the existing discovery that they would need to
2 go through before trial.

3 THE COURT: All right. So the government is
4 in agreement with the defendant's motion?

5 MR. ATCHLEY: We are, Your Honor.

6 THE COURT: All right then. Is it
7 Mr. Zeidenberg? Will you be addressing the motion?

8 MR. ZEIDENBERG: I will, Your Honor.

9 THE COURT: All right, sir. And what
10 schedule are you looking at for a trial date?

11 MR. ZEIDENBERG: Your Honor, I would
12 respectfully ask if we could set the trial date after
13 we have a ruling from Your Honor on the bail motion,
14 because obviously it's going to affect in different
15 ways our scheduling request, both because, one, if
16 Mr. Ho is detained throughout, obviously we're going
17 to be urgently trying to move forward as quickly as we
18 possibly can; and secondly, it's complicated by the
19 fact that notwithstanding we have -- we'll be pushing
20 for a sooner trial date as we can.

21 It's going to greatly complicate our trial
22 preparation schedule, because Mr. Ho wouldn't be
23 available, except in a very limited way, to assist us
24 in viewing the materials and coming up with an
25 understanding of the facts, which are complicated.

1 So those are two factors that sort of run in
2 opposite directions. And so respectfully, I'd ask if
3 we could see what Mr. Ho's status is, and then we can
4 I think maybe a have a more intelligent or informed
5 decision on our part about what type of date we should
6 be looking for.

7 THE COURT: Well, our practice is to set a
8 trial date and then take up the issue of detention.

9 MR. ZEIDENBERG: Well, I don't want to
10 disrupt the Court's practice. If you want to pick a
11 date in December, I would think with the understanding
12 that, as we explained in our motion, Judge, there is
13 we're told 80,000 e-mails in this case.

14 I haven't gotten any of them; not because of
15 any problem with the government. There have been some
16 technology issues on our part. We just got the disk
17 from prior counsel last week. We had trouble reading
18 them. So there's 80,000 unread e-mails. And half of
19 them I'm told are in Chinese, which I have no
20 familiarity with being able to speak. So we're going
21 to have to get translations done. We're going to have
22 to somehow try and get these in front of Mr. Ho.

23 So I can suggest a trial date in December,
24 but I don't know -- what I don't know is going to be
25 in that discovery, which could drastically change our

1 assessment of the case, the evidence, our strategy.
2 So there's literally no discovery that we have been
3 able to -- I shouldn't say literally none -- very,
4 very little in the way of discovery that we have thus
5 far been able to access.

6 THE COURT: Does your firm represent ETI?

7 MR. ZEIDENBERG: We haven't discussed that,
8 Your Honor, but I think that we will be.

9 THE COURT: You think you will be. Is Kish
10 and Lietz -- are they out of this case now?

11 MR. ZEIDENBERG: I believe they will be,
12 Your Honor.

13 THE COURT: They will be.

14 Well, let me see what the government has to
15 say.

16 Mr. Atchley, the defendant is asking the
17 Court to basically rule on the detention issue and
18 then take up the matter of a trial date.

19 The only problem with that is there may not
20 be a ruling today on this detention issue. It may be
21 taken under advisement. There may be a written
22 opinion. You know, we may bring you back for a
23 further hearing. I don't know. Let's hear what the
24 government wants to say about that.

25 MR. ATCHLEY: Well, with all due respect to

1 Mr. Zeidenberg, I think we need to go ahead and set a
2 trial date. I told him earlier that I felt like if we
3 -- I was fine. I understood their position. I did
4 not oppose more time in this matter. I recognize the
5 complexity of it and the issues regarding the
6 discovery and that it will take them time to prepare.

7 The only thing that I ask is that if we do
8 set a trial date, it would be nice that if we set one
9 out far enough to where we knew we were going to get
10 all of our pre-trial litigation completed so that we
11 had a firm trial date in the future and we didn't run
12 up against it and then have to move it again. That
13 would be my only request.

14 The only other request would be that if
15 we're going to target something around December, I
16 would prefer to go into January because of the holiday
17 season. It's going to take us some time to try it.
18 If we set it at any time in December, I think we're
19 seriously looking at running the risk of bifurcating
20 it around the holidays.

21 That's not good for the defendant. That's
22 not good for the government. It's not good for the
23 Court.

24 THE COURT: Well, the defendant has
25 indicated that they anticipate motion practices --

1 Well, what do you think in terms of a trial
2 setting, Mr. Zeidenberg?

3 MR. ZEIDENBERG: I'm sorry, Your Honor. Say
4 that again, please.

5 THE COURT: What are you contemplating in
6 terms of setting a trial date in this case? You said
7 something about December. Is that what -- you've also
8 indicated that you anticipate motion practice on
9 behalf of your defendant.

10 MR. ZEIDENBERG: Yes, I do; extensive I
11 would think.

12 THE COURT: All right.

13 MR. ZEIDENBERG: I mean I don't -- if we
14 want to pick a date in January, you know, that's I
15 think the government's suggestion maybe. I don't know
16 what the government is thinking in the terms of the
17 length this case would take to try.

18 THE COURT: Judge Varlan has provided the
19 following dates in January for your consideration:
20 January 10, 17, 24.

21 MR. ZEIDENBERG: I'm available.

22 THE COURT: He's available. Mr. Atchley.

23 MR. ATCHLEY: I would prefer the 24th just
24 because it gets me out of Christmas.

25 THE COURT: All right. The Court is going

1 to find that the defendant's motion is well-taken. It
2 will be granted. The Court is going to declare the
3 case complex and extend the time for filing pre-trial
4 motions as well as resetting the trial date. The
5 trial date will be reset to January 24 of 2017.

6 What are you asking for in terms of time for
7 filing motions, sir?

8 MR. ZEIDENBERG: I'd ask for 60 days, Your
9 Honor.

10 THE COURT: Do you have a specific date you
11 would like to request, counsel?

12 MR. ZEIDENBERG: No, Your Honor; whatever
13 the Court --

14 THE COURT: Any objection, Mr. Atchley?

15 MR. ATCHLEY: No, sir. No objection.

16 THE COURT: All right. August 19th.

17 MR. ZEIDENBERG: Thank you.

18 THE COURT: The government will respond on
19 or before September 2 unless you request additional
20 time, Mr. Atchley.

21 MR. ATCHLEY: Yes, sir. And I don't
22 anticipate it, but if they're very complex pre-trial
23 motions, I may require some additional time to
24 respond.

25 THE COURT: All right. And, Mr. Zeidenberg,

1 if you find that you do require more time beyond
2 August 19th, of course, you have leave to file a
3 motion to make that request.

4 MR. ZEIDENBERG: Thank you, Your Honor.

5 THE COURT: All right. Is there anything
6 else the Court needs to address today with regard to
7 this --

8 Do you want to set a pre-trial conference
9 today?

10 (The Court and law clerk conferred.)

11 THE COURT: Okay. All right. We'll set a
12 pre-trial conference in this case on January 10 at
13 1:30.

14 Is the government requesting a plea cutoff
15 at that date, Mr. Atchley?

16 MR. ATCHLEY: Your Honor, actually could
17 we -- we would like a plea cutoff. I think it's fine
18 for that date, yes, sir.

19 THE COURT: Okay. January 10th at 1:30 for
20 pre-trial conference, plea cutoff, reciprocal
21 discovery.

22 Anything else?

23 MR. ATCHLEY: No, sir, not from the
24 government.

25 THE COURT: Anything else on the schedule,

1 Mr. Zeidenberg?

2 MR. ZEIDENBERG: No, Your Honor.

3 THE COURT: All right. Thank you, counsel.

4 All right. The government's requested --
5 the defendant has requested a hearing on detention in
6 this matter.

7 Mr. Atchley, is the government still
8 requesting detention of the defendant?

9 MR. ATCHLEY: Yes, sir, we are. We filed a
10 response to the defendant's motion.

11 Your Honor, I don't believe there's a
12 factual dispute with regard to the facts surrounding
13 the defendant in this case, but we have a position
14 with regard to this matter, and we move that he be
15 detained.

16 THE COURT: All right. Let's hear from the
17 defendant first then.

18 Counsel --

19 Oh, before we begin, let me just make sure
20 we agree on something. It appears to the Court that
21 the presumption does not apply in this case.

22 Is that correct, Mr. Atchley?

23 MR. ATCHLEY: Yes, sir, that is correct.

24 THE COURT: All right. Obviously you agree?
25 Mr. Davies is nodding his head.

1 MR. DAVIES: Yes.

2 THE COURT: All right. The Court is going
3 to find at the outset that there is no presumption of
4 detention applicable in this case.

5 Mr. Zeidenberg.

6 MR. ZEIDENBERG: Thank you, Your Honor.

7 Your Honor, I appreciate the point that the
8 Court just made, and I think that that's obviously
9 what the Court should start with. There is in fact
10 under the bail statute, as I'm sure the Court is
11 aware, a presumption in favor of release and that the
12 Court is to fashion the least restrictive terms that
13 would reasonably assure the defendant's appearance in
14 court.

15 I suggest respectfully that pre-trial
16 detention is not the least restrictive means that
17 would reasonably assure Dr. Ho's appearance in court.

18 Your Honor, the factors that the Court
19 should, as instructed under the statute, consider all
20 weigh -- suggest in favor of pre-trial release.

21 First of all, there's no presumption in this
22 case, and I think that's highly significant in light
23 in particular to the government's response, which I
24 received yesterday evening. The government's argument
25 essentially, Your Honor, is under the statute he's

1 looking at a potential life sentence; and therefore,
2 it's inherent that he would have a desire to flee and
3 you should detain him.

4 Essentially what the government is arguing
5 is in favor of a presumption based on the statute that
6 is charged. But that's not what the law says. The
7 law specifically identifies particular statutes in
8 which the presumption resides. This particular
9 statute does not have that presumption. Simply
10 looking at the potential sentence does not create a
11 presumption.

12 If you look at the nature and circumstances
13 of the offense charged, Judge, this case -- and we
14 went into considerable detail in our factual section
15 of our brief. And the reason we did that is to
16 emphasize to the Court that this case is more -- from
17 what we have read and what we have seen more in the
18 nature of a regulatory offense where Dr. Ho the
19 government seems to be alleging did not get
20 authorization or a license to do what he otherwise
21 could have done.

22 There is nothing about the nature and
23 circumstances of the offense charged that suggests
24 pre-trial detention is required. It's not a crime of
25 violence.

1 And the second factor, the weight of the
2 evidence --

3 THE COURT: On this first factor before we
4 leave it -- and we're talking about the 3142(g)(1)
5 factors with regard to nature and circumstances of the
6 offense charged. The statute specifically lists a
7 rather -- I don't know -- undefined term called
8 Federal Crime of Terrorism. Is that applicable in
9 this case?

10 MR. ZEIDENBERG: Your Honor, there is no
11 evidence of that that's been alleged in any way,
12 shape, or form. And I don't even want to say the word
13 bomb, but I'm going to say it. But there is no
14 suggestion that Dr. Ho was involved in terrorism,
15 assisting terrorists.

16 I mean, Your Honor, China -- obviously we
17 have a -- the United States -- I'm not a foreign
18 policy expert, but the United States has a complicated
19 relationship with China. But the fact remains China
20 has dozens, if not more, nuclear power plants, most of
21 which have been built by other American companies or
22 other western European companies. Technology --
23 Westinghouse was involved in building most of their
24 nuclear power plants. So it's in our country's
25 interests to have those nuclear power plants operate

1 safely and efficiently.

2 Now, the government has not alleged that
3 there was any diversion of this material, that it was
4 any part of Dr. Ho's -- it's not alleged as part of a
5 conspiracy to engage in anything that's other than
6 what's on the four corners of the document, which is
7 assisting them with these nuclear power reactors,
8 which as I understand it as a natural byproduct of the
9 process of generating electricity produce small
10 amounts of plutonium. That's our understanding of
11 what the government's theory is.

12 So as the Court I'm sure is well-aware, I
13 don't know if you want to take judicial notice, but as
14 I understand it, China has been a nuclear power for
15 decades and is actually a signatory to treaties with
16 the United States regarding nuclear power.

17 So this is not a case involving Iran. It's
18 not a case involving North Korea. I by no means want
19 to make light of the nature of the charges. Obviously
20 they're very serious. But I think it's important to
21 discriminate in our minds between what is actually
22 alleged and what could be alleged in cases involving a
23 statute like that.

24 And frankly, I think that this statute --
25 and this will come out I'm sure down the road -- that

1 I think this statute is really designed to prevent the
2 harms that the Court just alluded to, which is doing
3 things which support terrorism.

4 Your Honor, as to the weight of the
5 evidence, I think there's a real question in our minds
6 in reading this statute whether a crime has even been
7 alleged. This statute is complicated. It's never
8 been used before. It's, as I said in our papers, an
9 aggressive and novel application of it.

10 I think by definition the fact that a
11 statute that's never been employed before in five
12 decades of existence makes it by definition a novel
13 theory. It's never been employed. So to suggest that
14 it's obvious and it would have been obvious to Dr. Ho
15 that his conduct was covered by it is simply not the
16 case.

17 So I don't think it could possibly be argued
18 even if the government -- strike that. I don't think
19 it can possibly be argued that the evidence here is
20 overwhelmingly or particularly strong when the statute
21 itself is so difficult to understand in its
22 application in this circumstance.

23 The statute prohibits the production of
24 special nuclear material. Any nuclear -- if the
25 government's reading of that is any nuclear power

1 plant creates special nuclear material, I think that's
2 a novel reading of what a lay person would understand
3 that statute to mean.

4 Your Honor, the third factor is the history
5 and characteristics of the defendant. Dr. Ho is 66
6 years old, Your Honor. He has never been in trouble
7 with the law. He has no prior convictions of any
8 kind. Obviously as a result, he has no prior history
9 of failure to appear.

10 He lives with his wife in a home that they
11 bought six years ago in Delaware. There is nothing
12 about his personal characteristics that make him a
13 flight risk.

14 Now, the government has made much of the
15 fact that he has lived a significant portion of the
16 year in China. That is true; he has. He has
17 extensive work ties in China, and he is the father of
18 a young child in China. But the fact is, Your Honor,
19 the government has his passport. He can't magically
20 get out of the country.

21 THE COURT: He can't?

22 MR. ZEIDENBERG: Not without a passport he
23 can't.

24 THE COURT: We've had a number of defendants
25 who have done that --

1 MR. ZEIDENBERG: Your Honor, I am not --

2 THE COURT: -- gotten out of the country
3 without a passport.

4 MR. ZEIDENBERG: Your Honor, I'm not aware
5 of a single case like this where a defendant has
6 failed to appear.

7 But if I may, Your Honor, proffer to the
8 Court. I have -- and I gave a copy of this --

9 THE COURT: You need to be at the podium or
10 the microphone won't get you. I hate to harp on that,
11 but the District Judges are harping on me to make
12 everybody talk into a microphone.

13 MR. ZEIDENBERG: That's quite all right,
14 Your Honor.

15 THE COURT: They want to know why I can't
16 control my courtroom like they do. So I'm going to
17 make everyone talk into a microphone until they stop
18 bugging me about it. Okay.

19 MR. ZEIDENBERG: I'm happy to --

20 THE COURT: I appreciate it.

21 MR. ZEIDENBERG: -- be confined to the
22 podium, Your Honor.

23 This is just some recent cases that we were
24 able to identify overnight. I gave a copy to the
25 government. These are all Chinese nationals or

1 Chinese Americans charged recently in U.S. District
2 Courts around the country, facing either life
3 sentences or the equivalent of life sentences because
4 of the guideline sentences because the amount of --
5 the loss amounts were so vast. All of whom were
6 released. All of whom have appeared in court.

7 So it is I think perfectly appropriate under
8 circumstances similar to this where courts have found
9 reasonably that conditions less than pre-trial
10 detention were appropriate and have in fact succeeded.

11 And what we're proposing, Your Honor, is
12 that in addition to the government keeping Dr. Ho's
13 passport obviously, that he wear an ankle bracelet,
14 that he be confined to his home.

15 THE COURT: You're basically asking for
16 house arrest?

17 MR. ZEIDENBERG: Exactly.

18 THE COURT: Okay.

19 MR. ZEIDENBERG: And, Your Honor, the reason
20 why it's so critical is that --

21 THE COURT: You know, you mention in your
22 brief that he would have to go to Washington, D.C., on
23 a regular basis to meet with his lawyers. Is that
24 still your position?

25 MR. ZEIDENBERG: Your Honor, we would

1 request that, but it's not -- that is if I were to
2 have to travel to Delaware to visit him, we'll travel
3 to Delaware to visit him. Compared to traveling to a
4 jail in Atlanta and trying to talk to him under those
5 circumstances where we aren't able to bring in
6 computers and he isn't able to review e-mails, then,
7 you know, the difference between that is night and
8 day. So if the Court is uncomfortable with him
9 leaving his home, then we will in a minute agree to
10 that.

11 And frankly, I've had cases like this, Your
12 Honor. Most of this can be done over the phone. It's
13 always helpful to meet in person, but it's not the
14 most important thing. What is the most important
15 thing is that Dr. Ho have the ability to review the
16 evidence against him and be in a position where he can
17 explain it to his counsel, because this is
18 complicated.

19 You know, the government has provided one
20 part of the discovery, which I was able to review, the
21 synopsis of hundreds of e-mails -- hundreds -- which
22 obviously I consider the most -- I'm assuming the most
23 relevant and most critical.

24 And I need to discuss every single of one of
25 those e-mails with him in detail and try to understand

1 what was being discussed here, what was the intent,
2 what was the understanding. The technology is
3 complicated. The facts are complicated.

4 And, Your Honor, it's just for him to be
5 able to prepare -- help me prepare to defend him in a
6 case where he's facing a potential life sentence.

7 It's fighting with both hands behind our
8 back. And I'm not suggesting the government is doing
9 this for ulterior reasons. I wouldn't suggest that
10 for a second. But the effect is that it just
11 handicaps our ability to defend the case.

12 Your Honor, the other factor, factor number
13 four, the nature and seriousness of the danger to any
14 persons of the community, again not to diminish the
15 seriousness of the statute, he is not a danger to the
16 community. Obviously that factor weighs in favor of
17 pre-trial release.

18 Your Honor, I would also note in the
19 government's response they point out that three
20 million dollars have moved since 2009 from a bank
21 account in China to ETI in Delaware. I suggest that
22 is another factor that suggests that in fact Dr. Ho is
23 based here in the U.S. The money is not flowing from
24 the U.S. to China; it's flowing from China to the U.S.
25 So over the course of seven years it's three million

1 dollars.

2 So it makes sense that if he's doing work in
3 China and being paid in China, that he would transfer
4 that money to the U.S. There is nothing I suggest
5 that is indicative of that which would suggest that
6 the resources remain in China. The resources
7 apparently are being moved to the U.S.

8 Now, Dr. Ho is prepared to post his house --
9 post a million dollars bond with his house as surety.
10 If that's not sufficient, he can post the entire
11 house. That would leave his wife of 42 years, who is
12 in court today, Your Honor -- she flew from Delaware
13 here last night and is in the courtroom this
14 morning -- that would leave her homeless.

15 And again, with all due respect to the
16 government and the Indictment, and we obviously
17 realize the seriousness of this case, there is nothing
18 about this Indictment which suggests that the only
19 course would be to flee the country, that the only
20 course would be to somehow get out of the United
21 States, give up your home, give up the million
22 dollars, leave your wife homeless, because there is no
23 defense to this case.

24 THE COURT: You're saying his home in
25 Delaware is tax appraised for at least a million

1 dollars?

2 MR. ZEIDENBERG: Yes, Your Honor.

3 THE COURT: Who owns the house? Whose name
4 is it in?

5 MR. ZEIDENBERG: I believe it's in both
6 their names, and we have the deed of the house with us
7 today, Your Honor. And we are prepared to post that
8 with the clerk's office.

9 THE COURT: But he doesn't own it?

10 MR. ZEIDENBERG: He does own it.

11 THE COURT: Solely?

12 MR. ZEIDENBERG: It's owned totally free and
13 clear.

14 THE COURT: But it's owned jointly with his
15 wife you're saying?

16 MR. ZEIDENBERG: Can I have just a moment?

17 THE COURT: Yes.

18 (Defense counsel and the defendant conferred
19 off the record.)

20 MR. ZEIDENBERG: It's owned jointly, Your
21 Honor.

22 THE COURT: Okay.

23 MR. DAVIES: And I think --

24 (Defense counsel and the defendant conferred
25 off the record.)

1 MR. DAVIES: I'm sorry. I think that there
2 may be a Line of Credit as opposed to a mortgage
3 dealing with the house, but I don't know if there is
4 any balance on that. We discussed that in the
5 pre-trial meeting yesterday.

6 (Defense counsel and the defendant conferred
7 off the record.)

8 MR. DAVIES: We believe that with the Line
9 of Credit the equity would still be in excess of a
10 million dollars.

11 MR. ZEIDENBERG: In sum, Your Honor, I'd
12 suggest that this individual, Dr. Ho, with an anklet
13 bracelet -- which as the Court knows, he's being
14 monitored. If it would to be cut off, there would be
15 a notice. He could be apprehended. He has no
16 passport to travel.

17 And he is going to be committed and devoted
18 to defending himself in this case. It's going to be
19 his full-time job. He's not going to be doing
20 anything else other than working on reviewing the
21 evidence -- the voluminous evidence in this case and
22 assisting me in preparing a defense.

23 We would be willing to submit to any other
24 pre-trial conditions that the Court or the government
25 feels are appropriate. I frankly, you know, have

1 wracked my brain for any other alternatives, but I'm
2 open to suggestions.

3 As the Court alluded to, if the Court or the
4 government have a particular concern about the idea of
5 him driving to DC or getting on a train to DC, then
6 that can be worked around. That's not a deal-breaker
7 by any means.

8 So I think the precedent shows from other
9 cases around the country, Your Honor, that this is
10 done routinely.

11 And again, Dr. Ho is an American citizen.
12 Although he has spent extensive time in China, he is
13 an American citizen. He has lived in this country for
14 over four decades.

15 So I think that given the fact that there is
16 no presumption in the statute, these other factors all
17 weigh in favor of release and that conditions can be
18 fashioned.

19 And finally, I would just remind -- just so
20 that everybody is aware -- that the statute does not
21 say conditions that guarantee his appearance, because
22 the only guarantee would be for him to be detained.
23 It's not an issue of whether it guarantees it. It's
24 whether it reasonably assures it. And I think that
25 these factors would reasonably assure his appearance.

1 So we would ask again for the Court to
2 consider pre-trial release.

3 THE COURT: All right. Thank you, counsel.
4 Mr. Atchley.

5 Let me ask you first, Mr. Atchley, if you
6 agree with defense counsel's comments with regard to
7 the (g)(1) factor of a Federal Crime of Terrorism not
8 being applicable in this case?

9 MR. ATCHLEY: I do, Your Honor. As this
10 statute lays out within the meaning of terrorism
11 within the federal code, this is not a terrorism case.
12 It's a national security case. It's a very serious
13 case no matter how insignificant the defense may
14 allude to the technology involved here. But it's an
15 extremely significant case.

16 Your Honor, the defendant in this case is
17 charged with procuring and helping to obtain on behalf
18 of the Chinese government technology that it is not
19 allowed to have.

20 Now, Congress has been very explicit in
21 protecting this technology. It enumerates several
22 countries. The defense says this is not a case
23 involving Iran, and this is not a case involving North
24 Korea; all true, but China is on that list along with
25 Iran and North Korea.

1 And the reason why this technology is so
2 closely held is because once it leaves our borders we
3 can't control it. And we have no faith in the Chinese
4 or the North Koreans or the Iranians or any of the
5 other countries on this list to control this
6 technology. It carries dual use, and it can be very
7 dangerous.

8 And he has made his living -- a very
9 lucrative living obviously. He's willing to pledge a
10 home worth in excess of a million dollars -- obtaining
11 and selling this technology.

12 Now, the factors in (g)(1), the nature and
13 circumstances of the offenses charged, certainly is an
14 important factor. He's facing a life sentence.
15 That's a significant factor and an appropriate factor
16 for the Court to consider. He, quite frankly, has
17 absolutely every incentive to flee in this case.

18 If I were in China faced with a life
19 sentence with a family in the United States, and I was
20 getting ready to stand trial, and I were out of
21 custody in China, and I had an opportunity to leave, I
22 can promise you this, I am fleeing China and going
23 back to the United States. And I think the defendant
24 in this case, if presented with that opportunity, will
25 do everything he can do.

1 Now. He has spent -- and I don't believe
2 they contest this -- an average of 290 days a year
3 outside of the United States over the last 10 years.
4 The least amount of time he has spent outside of the
5 United States in the last 10 years was 266 days in
6 2009. In 2007 he spent 314 days; last year in '15 and
7 in '14 301 days each.

8 This man does not live in the United States.
9 He may be a United States citizen. But his home is in
10 China. His family is in China. He may have a wife
11 here, but he has another family in China with a small
12 son and he is very motivated to get back and see his
13 son.

14 I can tell you this, he also has not been
15 very straight forward with the Court about his income.
16 He says he earns approximately \$1,800 a month from
17 Social Security, that his wife earns \$50,000 a year,
18 and they have a small amount of money in their
19 checking account. However, they're willing to put
20 forth a million dollars, free and clear. Where is
21 this money coming from?

22 Taken off his person at his arrest was an
23 encrypted bank dongle from the Bank of China. How
24 much money does he have in the Bank of China? I have
25 no idea. We're not allowed access to that. The

1 Chinese government will not provide us that
2 information. But it is clear he has financial
3 resources outside of the United States.

4 Now, the most disturbing thing about this
5 case, and the most disturbing thing about the
6 defendant, and what I have to admit here, is that if
7 he were released on home detention with electronic
8 monitoring and a bond and everything else, the truth
9 of the matter is is that if the government of China
10 really wants him out of the United States, they're
11 going to find a way to get him out of the United
12 States. And there's absolutely nothing I can do to
13 prevent that. Nothing.

14 If they want, they can manufacture a
15 legitimate passport with his photograph and another
16 name or any name they choose. And they can slip it to
17 him inside of the United States. They can make flight
18 arrangements for him in another name. We would never
19 know. And the minute he cut off that bracelet he's
20 gone, and we couldn't stop him.

21 And why wouldn't he go? Why wouldn't he go?
22 To stay here and defend this case I imagine and defend
23 his honor and run the risk of facing a life sentence,
24 or he can just go, because if he goes to China, we are
25 not getting him back.

1 MR. ZEIDENBERG: Your Honor, if I may just
2 have a one-minute rebuttal.

3 THE COURT: Of course. It's your motion;
4 you get the last word.

5 MR. ZEIDENBERG: Thank you.

6 Your Honor, as to the last point by
7 Mr. Atchley about if the government of China were to
8 want him out and could create travel documents and
9 exfiltrate him from the country, respectfully, Your
10 Honor, that is pure speculation. There is not one
11 shred of evidence that the government of China has any
12 interest in protecting or assisting Dr. Ho in any way,
13 shape, or form.

14 And there is no evidence that I'm aware
15 of -- and I'm sure the government would advise us if I
16 was incorrect about this -- them ever doing that on
17 behalf of any Chinese American citizen who has been
18 charged with an offense, that they participated in
19 exfiltrating them from the United States.

20 So respectfully, I don't think the Court can
21 rule on the basis of pure speculation and conjecture
22 in the absence of any tangible evidence.

23 THE COURT: Anything else from the
24 government?

25 MR. ATCHLEY: No, sir.

1 THE COURT: All right. Anything anybody
2 else wants to say on this issue of detention?

3 MR. ZEIDENBERG: No, Your Honor.

4 THE COURT: Okay. You said you've brought
5 the deed to the house? Is that what you said?

6 MR. ZEIDENBERG: Yes, Your Honor.

7 THE COURT: Did you bring anything else in
8 the way of a proposed bond or cash surety bond or
9 anything like that, or are you saying your client is
10 simply going to deposit a million dollars with the
11 clerk's office?

12 MR. ZEIDENBERG: What I had anticipated,
13 Your Honor, would be a cash surety that would be
14 secured by the title of the house.

15 THE COURT: All right. Well, do you have an
16 appraisal or anything like that with you?

17 MR. ZEIDENBERG: You can look it up. Yeah,
18 it was sold -- because of the recency of the sale I
19 looked it up and found it on the -- it was sold for
20 close to two million dollars I believe.

21 THE COURT: Is that something you can file
22 with the Court? I mean, yeah, I could look it up, but
23 normally the Court restricts itself to the evidence
24 presented by the parties on these matters.

25 MR. ZEIDENBERG: Your Honor, if the Court

1 needs a formal appraisal -- and sometimes I know that
2 that's done -- that can be done or --

3 THE COURT: Well, I know on my more modest
4 home I get a tax bill every year from the county,
5 which has at least a tax appraisal. I would take
6 that --

7 MR. ZEIDENBERG: Okay.

8 THE COURT: -- as a tax appraisal.

9 MR. ZEIDENBERG: We could get -- we don't
10 have it in hand, but we can obviously get it.

11 THE COURT: And that could be filed with the
12 Court.

13 MR. ZEIDENBERG: Of course.

14 THE COURT: All right. The Court -- I take
15 your word for it that he has a, quote, million dollar
16 home, but I've not been presented any evidence of
17 that. Normally we do get some evidence that it really
18 is that.

19 And Mr. Davies indicated there's a Line of
20 Credit against the house. There may be a balance. I
21 mean if there's is an 800,000-dollar Line of Credit
22 against it that's maxed out, that's a factor.

23 MR. ZEIDENBERG: Okay. That's fine, Your
24 Honor. We'll be happy to provide the details of that
25 with the Court. I may not have it for you today, but

1 we will get the tax records or the tax assessment and
2 provide them.

3 THE COURT: And how much time do you want to
4 do that, counsel?

5 MR. ZEIDENBERG: Can I have a moment?

6 THE COURT: Yes.

7 (Defense counsel with the defendant
8 conferred off the record.)

9 MR. ZEIDENBERG: Your Honor, we may be able
10 to get the sale documents from the house -- it was
11 fairly recent, six years ago, five years ago -- which
12 would have an assessment of what they paid for it if
13 that would satisfy the Court.

14 THE COURT: I would like to see the tax
15 appraisal from the local taxing authority.

16 MR. ZEIDENBERG: We will get that as well.

17 THE COURT: And also if there's a proposed
18 surety bond or any type of bond arrangement that
19 you're actually proposing, I would like to see that as
20 well.

21 MR. ZEIDENBERG: Okay. That's fine, Your
22 Honor.

23 THE COURT: Or if he's just going to deposit
24 a million dollars in cash, I'd like to know that.
25 What is actually the proposal?

1 MR. ZEIDENBERG: He won't be able to do that
2 because he doesn't have the -- the Line of Credit
3 isn't sufficient to do that, but he could post the
4 entire house -- the value of the house, which would be
5 well in excess of a million dollars.

6 THE COURT: All right. Well, then we would
7 like to see that.

8 MR. ZEIDENBERG: Your Honor, I'd be happy to
9 get those documents and show them to the government
10 and see if they're satisfied. We could submit it to
11 the Court or the clerk's office, but we would need --
12 I don't know -- a day or two to get these things
13 together.

14 THE COURT: I understand. That's why I'm
15 asking --

16 MR. ZEIDENBERG: Okay. Very well. Are you
17 asking how much time specifically?

18 THE COURT: Do you want me just to give you
19 a week? I mean I just need to have an idea. We all
20 have to have goals to shoot for.

21 MR. ZEIDENBERG: How about -- today is
22 Tuesday. How about Friday?

23 THE COURT: That would be great. I would
24 appreciate that.

25 MR. ZEIDENBERG: All right. Thank you, Your

1 Honor.

2 THE COURT: I don't want the decision of
3 ruling on this to take any longer than necessary.

4 Okay. Anything else? None.

5 Thank you, counsel. I appreciate your
6 presentations on this matter and the briefing, which
7 was excellent.

8 All right, Madam Clerk.

9 THE COURTROOM DEPUTY: All rise. This
10 Honorable Court stands in recess.

11 (End of Proceedings.)
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REPORTER'S CERTIFICATION

STATE OF TENNESSEE)

COUNTY OF KNOX)

I, LYNDA L. CLARK, LCR #034, RMR, CRR, Court Reporter and Notary Public, in and for the State of Tennessee, do hereby certify that the above Court Hearing was reported by me, transcribed by me, and that the foregoing 35 pages of the transcript is a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am neither kin nor of counsel to any of the parties, nor in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 20th day of June, 2016.



A handwritten signature in cursive script that reads "Lynda L. Clark".

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